

- (1) The transcript of hearing dated September 22, 1998, before Administrative Law Judge Pamela J. Fuller, including the exhibits attached.
- (2) The transcript of proceedings before Special Administrative Law Judge William F. Morrissey dated April 16, 1998, with attached exhibits.
- (3) The transcript of evidentiary deposition of Charles K. Kenyon taken April 14, 1998, on behalf of respondent, with attached exhibits.

- (4) The evidentiary deposition transcript of Cecil Eugene Farmer taken on April 14, 1998, on behalf of respondent.

In addition, the Board considered the documents and exhibits filed and of record with the Division of Workers Compensation in this matter.

STIPULATIONS

The Appeals Board considered the stipulations of the parties as agreed to in the transcript of proceedings before Special Administrative Law Judge Morrissey and Administrative Law Judge Fuller on April 16, 1998, and September 22, 1998, respectively.

ISSUES

Did Administrative Law Judge Pamela J. Fuller err in denying claimant's request for penalties for non-payment of medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 4, 1998, Special Administrative Law Judge William F. Morrissey entered an order for compensation, granting claimant temporary total disability compensation and the following order: "Medical treatment is ordered to be paid by the Respondent and Insurance Carrier on Claimant's behalf." The dispute involves a bill from St. Catherine Hospital in Garden City, Kansas, in the amount of \$73,106.23. A statement in that amount was attached to the hearing transcript before Special Administrative Law Judge Morrissey. A more detailed statement was also attached, although the more detailed statement was not complete and is only partially legible. In addition, several medical bills from other health care providers were attached to the transcript.

On May 5, 1998, claimant sent a letter to respondent's attorney by certified mail demanding immediate payment of the temporary total disability compensation and medical expenses pursuant to K.S.A. 44-512a. On May 11, 1998, respondent appealed Judge Morrissey's Order to the Workers Compensation Appeals Board. Disputed issues include whether claimant suffered accidental injury and whether her injuries arose out of and in the course of her employment with respondent. On May 28, 1998, claimant filed her Application for Penalties, requesting penalties only for respondent's failure to pay the temporary total disability ordered by Judge Morrissey.

On June 29, 1998, the Board issued its order affirming Judge Morrissey's finding that claimant had proven accidental injury arising out of and in the course of her employment with respondent. On July 10, 1998, respondent began accumulating the medical bills for payment.

On July 29, 1998, claimant sent a second letter to respondent by certified mail again pursuant to K.S.A. 44-512a. This second letter demanded payment of all medical expenses

incurred by claimant and ordered paid by the Administrative Law Judge and the Appeals Board, but specified only the \$1,185 due and owing Radiological Services. The attached itemized copies were illegible.

Claimant was demanding total payment of \$73,106.23, which was the amount alleged due and owing St. Catherine Hospital. Several thousand dollars worth of medical bills had already been paid by the respondent, including those owed to Dr. Howard H. Harris and Dr. Steven Simpson.

On August 4, 1998, respondent contacted St. Catherine Hospital, requesting a detailed and itemized statement of the medical expenses allegedly owed. On August 17, 1998, respondent's adjuster received an itemized bill from St. Catherine Hospital, but no medical records to substantiate the charges were attached. The total requested from St. Catherine Hospital at that time was \$57,254.82. In addition, there were three pages of duplicate bills included in the packet.

On August 19, 1998, respondent again contacted St. Catherine Hospital requesting the full records. On August 20, 1998, claimant filed her second Application for Penalties with the Division of Workers Compensation, requesting penalties for the failure of respondent to pay both the temporary total disability and the medical expenses awarded by Special Administrative Law Judge Morrissey.

On August 25, 1998, respondent and St. Catherine Hospital had a telephone conference regarding which records were required and how detailed they needed to be before payment could be made. Also on August 25, 1998, claimant's notice of penalties hearing was filed with the Division.

On September 1, 1998, the total statement was received by respondent and forwarded to respondent's adjuster. This record of medical reports included not only the itemized statement, but also the medical records substantiating the charges requested.

On September 21, 1998, after a review and justification of the records with the Workers Compensation medical fee schedule, total payment in the amount of \$62,628.36 was made to St. Catherine Hospital, satisfying the debt.

On September 22, 1998, the penalties hearing before Administrative Law Judge Fuller was held in Garden City, Kansas. On that same date, the Administrative Law Judge entered her Order, denying claimant's request for penalties. No explanation for this denial was provided in the Order.

K.S.A. 44-512a states, in pertinent part:

(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due . . . the employee shall be entitled to a civil penalty . . . for such

compensation in an amount . . . for each past due medical bill equal to the larger of either the sum of \$25 or the sum equal to 10% of the amount which is past due on the medical bill

K.S.A. 1997 Supp. 44-551(b)(2)(C) states, in pertinent part:

In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review.

In this instance, the significant dispute between claimant and respondent hinged upon whether claimant's automobile accident constituted an accident arising out of and in the course of claimant's employment with respondent. Therefore, compensability was at issue.

Claimant's May 1998 demand letter was issued several weeks before the Board's decision affirming the determination of the compensability issue. Therefore, as the case was on appeal to the Board, the claimant's initial May 5, 1998, demand letter was premature.

The July 29, 1998, demand letter from claimant cites K.S.A. 44-512a and attaches certain medical bills to the demand letter. However, the itemized medical bills attached are illegible and of no assistance to the Board in its attempt to decide what, if any, payment would be due and owing. In addition, the demand letter of that date lists only the \$1,185 due Radiological Services, which has been paid and is not part of the dispute before the Board. K.S.A. 44-512a requires:

(1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due

The Appeals Board finds that the July 29, 1998, letter from claimant, while it attached certain medical records, did not meet the requirement that the items be set forth "with particularity." The itemization provided by claimant was illegible and incomplete. In addition, there was a significant dispute between claimant and respondent and the hospital regarding the total amount of medical bills due St. Catherine Hospital.

The overriding purpose of the Workers Compensation Act is to secure prompt payment to injured employees of benefits provided for under its terms. Hatfield v. Wal-Mart Stores, Inc., 14 Kan. App. 2d 193, 786 P.2d 618 (1990).

Respondent on several occasions contacted St. Catherine Hospital in order to obtain a complete itemized list of the bills allegedly due and owing and the medical records to substantiate those bills. This information was not provided to respondent in its complete form until September 1, 1998. After receiving the bills, and justifying those bills with the

Kansas Workers Compensation medical fee schedule, respondent paid those bills on September 21, exactly 20 days later.

The Appeals Board finds that respondent has complied with the provisions of K.S.A. 44-512a in that, once respondent was provided with a detailed list of the charges and the medical records to justify same, respondent paid those bills in a timely fashion. It is also significant that the total allegedly due and owing St. Catherine Hospital at the time of the hearing before Judge Morrissey was nearly \$11,000 higher than that allowed under the medical fee schedule.

The Appeals Board, therefore, agrees with the decision by Administrative Law Judge Fuller to deny claimant's request for penalties.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated September 22, 1998, denying claimant's request for penalties for failure by respondent to pay certain medical expenses should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
James M. McVay, Great Bend, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director